

## **REMARKS/ARGUMENTS**

Applicants have reviewed and considered the non-final Office Action mailed on October 17, 2007, the withdrawal of the allowability of claims 1-19, and the newly-cited references cited therewith.

Claims 1-19 stand rejected. Claims 1-19 are now pending in the application.

### **Claim Rejections – 35 U.S.C. § 103**

The Examiner has rejected Claims 1-6, 9, 10 and 12-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,827,546 (“Bowen”) in view of U.S. Patent No. 3,978,855 (“McRae”) and further in view of U.S. Patent No. 5,419,913 (“Podell”). The Examiner has rejected Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Bowen in view of McRae and Podell as applied to claims 1-6, 9, 10 and 12-17, and further in view of U.S. Patent No. 4,997,425 (“Shioya”). The Examiner has rejected Claims 8, 11, 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Bowen in view of McRae and Podell as applied to claims 1-6, 9, 10 and 12-17, and further in view of U.S. Patent No. 6,252,129 (“Coffee”). The Applicants respectfully traverse each of these rejections.

An alleged reason for combining the teaching of the prior art must be supported by articulated reasoning with some “rational underpinning” to support the legal conclusion of obviousness. *See KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Broad conclusory statements of suggestion or motivation standing alone are not sufficient. *Id.* Moreover, most inventions arise from a combination of old elements. *In re Kotzab*, 217 F.3d 1365, 1369 (Fed. Cir. 2000) (citing *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)). “Thus, every element of a claimed invention may often be found in the prior art” and the Examiner must consider the claimed invention as a whole. 35 U.S.C. § 103; *id.* at 1369-70; accord MPEP § 2141.02. “[I]dentification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *Kotzab*, 217 F.3d at 1370.

Claims 1 and 10 are allowable because none of the references teach or suggest the invention as a whole, and the Examiner has not satisfied the burden of establishing that the cited references render these claims unpatentable. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify the device of Bowen according to the teaching of Podell because Bowen and Podell “seek to solve a similar problem in the art (i.e. provide a protective cover for a wound).” (Office Action of 10/17/2007, at 3.) The only support the Examiner provides for this argument is a citation to col. 3, ll. 5-7 of Podell, but this reference does nothing to support the premise that Bowen seeks to “provide a protective cover for a wound.” Even a cursory reading of Bowen reveals that Bowen does not contemplate providing a wound covering. Nowhere does Bowen suggest that the device described has any application to covering a wound. Bowen is directed to more industrial applications, e.g., Bowen, *supra*, at col. 5, ll. 22-25, and generally rests on a “floor or supporting structure,” rather than on a wound, e.g., *id.* at col. 2, ll. 25-27, col. 2, ll. 45-48, & col. 6, ll. 63-64. Bowen contemplates a vacuum pad constructed of sturdy, plastic panels, e.g., *id.* at col. 2, 34-36 & col. 6, ll. 65-67, designed to withstand “being crushed or deformed,” so that “walking and standing on vacuum pad 40 will generally not adversely affect its ability to collect potentially hazardous fluids.” *Id.* at col. 7, ll. 1-4; see also *id.* at col. 7, ll. 4-6 (“chairs and other types of equipment may be placed upon or rolled across vacuum pad 40 without permanently deforming fluid flow channels”). Thus, the Examiner’s rejection is based on a false premise and does not demonstrate why a person of ordinary skill in the art would look to Bowen “so as to provide a dressing cover for said vacuum pad with a reasonable expectation of success.” (Office Action of 10/17/2007, at 3.) Accordingly, the rejection of claim 1 and 10 and their dependents is improper and should be withdrawn.

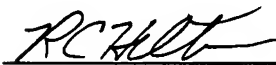
## **CONCLUSION**

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) or an additional Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made and the Commissioner is authorized to charge the required fee to deposit account number 50-2816.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 50-2816.

In light of all the foregoing, believing that all things raised in Examiner's non-final Office Action have been addressed, Applicants respectfully request a notice of allowance and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicants invite the Examiner to contact the undersigned at 214.758.6641.

Respectfully submitted,



Robert C. Hilton  
Reg. No.: 47,649

Date: 1/17/08

For Applicant:  
Kinetic Concepts, Inc.  
Legal Department – Intellectual Property  
P.O. Box 659508  
San Antonio, Texas 78265-9508  
Telephone: 210.255.6855  
Facsimile: 210.255.6969